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U.S. CUSTOMS AND

PROTECTION OF

INTELLECTUAL PROPERTY RIGHTS

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o What is an intellectual property right?

Broadly defined, it is the exclusive ownership of any original useful product of the thought processes. The Federal Government recognizes four broad categories of intellectual property:

Patents,
Trademarks,
Copyrights, and
Mask Works.

o How do these categories differ?

A patent is issued to protect novel and useful inventions. Examples might be anything from a new type of kitchen gadget, to a machine to make semiconductors, to a new process for manufacturing spaghetti, to a new medicine, to a new type of hybrid vegetable which is the result of genetic engineering. Patents are issued by the U.S. Patent and Trademark Office, Department of Commerce, usually for a term of 17 years (14 years for design patents) and are not renewable.

A trademark is a design, slogan, or brand name, used to identify products or services as coming from a particular supplier. Some familiar examples include "Coca Cola," "Xerox," "Sony," "IBM," and the Izod brand's "alligator design." Once a trademark has been used in interstate commerce for the requisite time, it can be registered with the Patent and Trademark Office for a renewable term of 10 years and thus protected for as long as it remains in use. (If a bona fide intention to use the mark is shown, registration can be applied for, but it must be in use before registration is granted.)

A copyright protects original creations of "authorship," such as books, music, original paintings, sound recordings, motion pictures, sculptures, and computer programs. Copyrights may be registered with the Copyright Office, Library of Congress, for a non-renewable term consisting of the life of the author plus 50 years. Works made for hire (created for an employer) are copyrightable by the employer for a term of 75 years from publication or 100 years from their creation, whichever comes first.

A mask work is a new type of intellectual property, protected by the Semiconductor Chip Protection Act of 1984. It is, in essence, the design of an electrical circuit, the pattern of which is transferred and fixed in a semiconductor chip during the manufacturing process. Mask works may be registered with the Copyright Office for a non-renewable term of 10 years.

o How can I file a claim to an intellectual property right?

Write to the appropriate agency for specific information. For patents and trademarks address:

Patent and Trademark Office
U.S. Department of Commerce
Washington, DC 20231

For copyrights and mask works, write:

U.S. Copyright Office
Library of Congress
Washington, DC 20559

NOTE: If you want Customs to help protect intellectual property in which you have an interest, it is imperative that it first be registered with the proper agency.

o How can Customs help protect my intellectual property?

The action which the Customs Service can take to help protect intellectual property depends on the type of intellectual property involved.

Customs has no authority to prevent the importation of goods which violate a patent unless directed to do so by an exclusion order issued by the U.S. International Trade Commission (ITC) under the provisions of Section 337 of the Tariff Act of 1930, as amended. An exclusion order directs the Secretary of the Treasury to deny entry to imports in violation of the order. The Customs Service acts for Treasury in enforcing these orders.

The ITC can also issue exclusion orders against goods imported by the use of many other unfair trade practices, such as violation of trademark, copyright, and mask work registrations (and the violation of otherwise unprotected trade secrets).

Recent revisions to this law make it easier for the owner of an intellectual property right to obtain such an order, since the requirement that "injury to a domestic industry" be demonstrated has been eliminated. These revisions also provide that the ITC can direct that imports from repetitive violators be seized. Details on the procedures to be followed in obtaining an exclusion order can be obtained from the:

U.S. International Trade Commission
Washington, D.C. 20436

While Customs cannot enforce a patent on its own authority, it can assist patent owners in attempting to determine if imports of infringing goods are taking place. Customs will survey imports and advise the patent owner of the names and addresses of importers whose goods appear to infringe the patent.

Customs charges a fee for this service, which may be of 2, 4, or 6 months' duration. Patent owners often use the results of Customs patent surveys as evidence for the ITC to begin exclusion order proceedings. The information may also be used in developing a patent infringement lawsuit.

Owners of registered trademarks and of registered copyrights can record these rights with the Customs Service. Recordation is relatively inexpensive, and subjects imports of violative items to seizure and forfeiture as prescribed by the Customs Regulations.

At the present time, the only protection Customs can give a mask work is by means of an ITC exclusion order or court order directing denial of entry of violative items. However, regulations are currently in preparation which will permit the recordation of registered mask works with Customs, thus giving them protection similar to that given to copyrights and trademarks.

Specific information concerning patent surveys and trademark and copyright recordation can be obtained from the:

Director, Commercial Rulings Division
U.S. Customs Service
Washington, D.C. 20229

IMPORTANT:

To effectively enforce intellectual property rights, the Customs Service relies heavily on the cooperation of the owners of these rights. If your intellectual property is the subject of an ITC exclusion order or of a Customs recordation, you must help us to help you. It has long been Customs' experience that industrial intelligence gathered by parties-in-interest is a powerful tool in aiding us to properly muster our resources to detect and deter violative importations. To merely rely on the fact of recordation or the existence of an ITC exclusion order is not enough. You are in the marketplace; tell us what you find there so that we can focus our enforcement efforts on today's real threats.

What is Project CICERO?

Project CICERO, the Customs-Industry Cooperative Enforcement Referral Operation, is U.S. Customs' leading edge in the war on trade fraud. The Customs Service seeks the cooperation of industries directly affected by all aspects of trade fraud. We seek information from all those affected - industry, labor, and the consumer.

This brochure was prepared by the Office of Commercial Fraud Enforcement, U.S. Customs Service, with the kind cooperation of:

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